

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
CUSHMAN & WAKEFIELD OF PENNSYLVANIA, INC.

(b) County of Residence of First Listed Plaintiff MONTGOMERY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
MITCHELL CLAIR, ESQUIRE
790 PENLLYN PIKE - SUITE 206
BLUE BELL, PA 19422
610-940-5400

DEFENDANTS
826 NEWTOWN ASSOCIATES, L.P. AND FIRST EVERGREEN PROPERTIES, LLC

County of Residence of First Listed Defendant FAIRFIELD, NEW JERSEY
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☐ 2 U.S. Government Defendant

☐ 3 Federal Question (U.S. Government Not a Party)

☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3
Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)		
CONTRACT	TORTS	FORFEITURE/PENALTY
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<div>PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice</div> <div>PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability</div>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement
FORFEITURE/PENALTY		
<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other		
LABOR		
<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act		
IMMIGRATION		
<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		
BANKRUPTCY		
<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157		
PROPERTY RIGHTS		
<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark		
SOCIAL SECURITY		
<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))		
OTHER STATUTES		
<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes		
FEDERAL TAX SUITS		
<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District (specify)

☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC Section 1332
Brief description of cause:
Enforcement of Contract

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE 10-21-15

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Cushman + Wakefield of
Pennsylvania, Inc.

CIVIL ACTION

826 Newtown Associates, L.P. and
First Evergreen Properties, LLC

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

10-21-15
Date

Mitchell Claire
Attorney-at-law

Plaintiff
Attorney for

610-940-5400

267-419-8274

mclairlaw@gmail.com

Telephone

FAX Number

E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Two Towers Bridge, Suite 125, One Fayette St. Conshohocken, PA
Address of Defendant: 55 Lane Rd - Suite 430, Fairfield, New Jersey
Place of Accident, Incident or Transaction: Enforcement of Contract
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☒ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, _____, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: _____

Attorney-at-Law

Attorney I.D.# _____

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 10/21/15 _____

Attorney-at-Law

Attorney I.D.# 44492

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CUSHMAN & WAKEFIELD OF PENNSYLVANIA, INC.	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	NO.
826 NEWTOWN ASSOCIATES, L.P.	:	
	:	
AND	:	
	:	
FIRST EVERGREEN PROPERTIES, LLC	:	
	:	
Defendants.	:	

COMPLAINT

1. Plaintiff, Cushman & Wakefield of Pennsylvania, Inc. is a Pennsylvania Corporation with principal offices located at Two Towers Bridge, Suite 125, One Fayette Street, Conshohocken, Pennsylvania.

2. Defendant 826 Newtown Associates L.P. is a New Jersey limited partnership with a principal place of business at 55 Lane Road, Suite 430, Fairfield, New Jersey.

3. Defendant, First Evergreen Properties LLC is the General Partner of 826 Newtown Associates L.P. and is a New Jersey Corporation with a principal place of business at 55 Lane Road, Suite 430, Fairfield, New Jersey.

4. Jurisdiction is founded upon diversity of citizenship as the Plaintiff is a citizen of the Commonwealth of Pennsylvania and the Defendants are citizens of the state of New Jersey. The amount in controversy exceeds \$75,000.00.

5. On or about July 9, 2012, the Plaintiff entered into an EXCLUSIVE LEASING AGREEMENT ("the Agreement") with Defendants for the exclusive right to act as the agent for Defendants listing and offering for lease, 70,480 total rentable square feet

located at 828 Newtown Yardley Road, Newton Pennsylvania. A full and complete copy of the Agreement is attached hereto, and incorporated herein as Exhibit “A.”

6. On or about July 22, 2014, the Agreement was extended by an Agency Extension Agreement (“the Extension”). A full and complete copy of the Extension is attached hereto, and incorporated herein as Exhibit “B”.

7. On or about October 1, 2014 Optimal Sports Health Clubs (“Optimal”) executed a lease and subsequently on December 1, 2014 took possession of 14,970 square feet of rental property at 828 Newtown Yardley Road, Newtown, Pennsylvania.

8. Pursuant to Paragraph 17 of the Agreement, the defendants are required to provide a copy of the executed Optimal lease to Plaintiff.

9. Defendants have never provided a copy of the Optimal lease to the Plaintiff.

10. Upon information and belief, the rental term of the Optimal lease is 14 years and the rate is \$18.00 per square foot increasing by \$0.50 per square foot for each successive year.

11. As the exclusive agent for the property, Plaintiff is entitled to a commission on the rental as set forth in paragraph 4 of the Agreement and the Compensation Summary attached as Exhibit “A” to the Agreement (“Compensation Summary”).

12. Pursuant to the Compensation Summary, Plaintiff’s compensation is calculated as follows:

SF	RENTAL RATE/SF	AGGREGATE RENT	COMMISSION RATE	TOTAL DUE
14,790	\$18.00	\$266,220.00	6%	\$15,973.20
14,790	\$18.50	\$273,615.00	5%	\$13,680.75
14,790	\$19.00	\$281,010.00	4%	\$11,240.40
14,790	\$19.50	\$288,405.00	3%	\$8,652.15
14,790	\$20.00	\$295,800.00	3%	\$8,874.00
14,790	\$20.50	\$303,195.00	2%	\$6,063.90
14,790	\$21.00	\$310,590.00	2%	\$6,211.80
14,790	\$21.50	\$317,985.00	2%	\$6,359.70
14,790	\$22.00	\$325,380.00	2%	\$6,507.60
14,790	\$22.50	\$332,775.00	2%	\$6,655.50
14,790	\$23.00	\$340,170.00	2%	\$6,803.40

14,790	\$23.50	\$347,565.00	2%	\$6,951.30
TOTAL				\$103,973.70

13. Pursuant to the Compensation Summary, commissions were due and payable in two equal installments, thirty days after execution of the leases and 30 days after occupancy.

14. More than thirty days have passed since both the execution of the Optimal lease.

15. More than thirty days have passed since the occupancy by Optimal.

16. Pursuant to the Agreement and the Compensation Summary, full commissions are due and owing to the Plaintiff as result of the Optimal lease.

17. Defendants have not made any payment as a result of the Optimal lease.

18. Demand has been made by the Plaintiff on the Defendants for payment of those commissions due.

19. Defendants are in breach of the Agreement.

WHEREFORE, Plaintiff, Cushman and Wakefield of Pennsylvania, claims damages in the amount \$103,973.70 from Defendants, 826 Newtown Associates L.P and First Evergreen Properties LLC together with the costs and disbursements of this action and delay damages.

LAW OFFICES OF MITCHELL CLAIR

BY: 

MITCHELL S. CLAIR, ESQUIRE
ATTORNEYFOR PLAINTIFF
I.D. #49492
790 PENLLYN PIKE
SUITE 206
BLUE BELL, PA 19422
(610) 940-5400

Dated: 10/24/15